IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3012 OF 2005

Trimurti Theatre and ors. ..Petitioners

Vs.

Mohanlal Bapubhai Shah and anr. ..Respondents

Mr. Girish S. Godbole for petitioners.
Mr. N.V. Walawalkar with Mr. G.H. Keluskar for respondent nos.1 and 2.

CORAM: B.H. MARLAPALLE, J.

Date : August 1, 2006.

P.C.:

1. Heard Mr. Godbole the learned counsel for the petitioners.

2. This petition arises from the order dated 11/2/2005 passed by the learned Civil Judge, Senior Division, at Sangali below Exh. 137. There is no doubt that the subject matter of dispute in the said suit is Trimurti Theatre at Sangali and Writ Petition No.1520 of 1995 came to be disposed off by us on 4/5/2006 in terms of the following directions:-

"We, therefore, direct that the Court Receiver will appoint, to begin with, the valuer to determine market price of the suit property, such appointment shall be done before 31st May, 2006 and the valuer will submit his report by 15th June, 2006. The Court Receiver shall then proceed to invite public tenders by fixing minimum price of the suit property on the basis of the valuer's report to be received by them and the Court Receiver also will take appropriate steps to cause publicity for the tender at the State level as well as in the neighbouring districts of Karnataka State. The said property would undoubtedly be sold to the highest bidder. However, while inviting the tenders, the Court Receiver will stipulate in the tender the reserved price for the bid, atleast 10% bid amount shall be remitted by way of banker's cheque/Demand Draft alongwith the tender so submitted in the sealed envelope and in favour of the Court Receiver. Time to submit the tenders would be generally about four weeks and after the last date of tender is over, the Court Receiver will open the tenders in presence of the petitioners and the respondents as well as the Registrar of the Court, in addition to the parties who have submitted their tenders. The Court Receiver then shall prepare their report and place before the learned Judge of the trial court to finalise and accept the highest bidder. Needless to mention that the petitioners and respondent nos.3 will be at liberty to participate in the bid. In case a successful tenderer fails to deposit the tender amount after his tender is accepted and within a fixed period, the deposited amount of 10% shall be liable to be forfeited and shall stand deposited in the pending suit. The suit property shall be then offered to the next highest bidder but in the same manner. We also wish to clarify that respondent no.3 will not claim any equity while participating in the bid, only because the licence of Trimurti Theatre stands in his name as of today. In

> case the highest bid is less than the reserved price, the learned Judge of the trial court and assisted by the Court Receiver shall dispose off the property by private treaty."

3. Undoubtedly, it would be in the interest of all the parties concerned that appropriate actions to ensure that highest bids are received in the auction sale of the said Theatre are taken. The Theatre must not only be in running condition but indeed it must have all the infrastructure at its place. It appears the Court Receivers who are two learned members of the Bar submitted their report at Exh.137 and prayed to the court below for appropriate orders so as to undertake the repairs of the false ceiling. By the impugned order this request has been turned down ostensibly on the ground that none of the advocates representing the respective parties were willing to share the repairing expenses. This issue is no more relevant and what is, in fact, important is that the false ceiling is repaired and restored at the earliest possible. The report submitted by the Court Commissioners indicates that the repair expenditure would be met from the amount of service charges collected and deposited with the court. This can be examined by the trial court in a better manner but the

fact remains that the trial court will have to pass appropriate orders so as to ensure that the false ceiling is repaired and restored

within a period of two months from today.

4. Hence, the petition is disposed off by directing the learned Judge of the trial court to consider the application submitted by the Court Commissioners and to direct them to take due steps for undertaking the false ceiling repairs and the same work shall be completed within two months from today. The challenge to the order passed below Exh.126 does not survive any further in view of the disposal of the Writ Petition No.1520 of 1995.

(B.H. Marlapalle,J.)